APPEAL NO. 171739
FILED SEPTEMBER 19, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on June 7, 2017, with the record closing on June 13, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), extends to a right knee anterior cruciate ligament (ACL) sprain; (2) the compensable injury of (date of injury), does not extend to a left knee ACL sprain; (3) the respondent (claimant) has not reached maximum medical improvement (MMI); and (4) because the claimant has not reached MMI an impairment rating (IR) cannot be determined at this time. We note that the decision refers to the appellant (self-insured) as a carrier.

The self-insured appealed the hearing officer's determinations that were adverse to it, contending that those determinations are against the great weight and preponderance of the evidence. The self-insured also contends that the hearing officer erred in not considering a report from (Dr. H), the post-designated doctor required medical examination doctor, that the self-insured timely submitted to the hearing officer after the CCH. The claimant responded, urging affirmance of the appealed determinations. The hearing officer's determination that the compensable injury of (date of injury), does not extend to a left ACL sprain was not appealed and has become final pursuant to Section 410.169.

DECISION

Reversed and remanded.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the self-insured has accepted bilateral knee contusions as components of the compensable injury. The parties also stipulated that venue is proper in the (city 1) Field Office of the Texas Department of Insurance, Division of Workers' Compensation (Division). However, the decision incorrectly states in Finding of Fact No. 1.A. that venue is proper in the (city 2) Field Office of the Division. The claimant testified she was injured while pursuing a shoplifting suspect.

We note that the decision reflects that claimant's exhibits 1 through 10 were admitted into evidence. However, the record reflected that claimant's exhibits 1 through 3 and 5 through 10 were admitted into evidence; claimant's exhibit 4 was not admitted.

At the conclusion of the CCH the record was left open until after 5:00 p.m. on June 12, 2017, for the self-insured to submit the report of Dr. H. Under the Statement of

the Case the hearing officer stated that "[t]he record in this matter was held open until after 5:00 p.m. on Monday, June 12, 2017, to allow [the self-insured] an opportunity to submit a report from its expert witness. That report was not received and the hearing closed on June 13, 2017."

The self-insured contends on appeal that it submitted Dr. H's report to the claimant's attorney and to the hearing officer on Friday, June 9, 2017. The self-insured attached email correspondence regarding the submission of that report. In an email dated June 9, 2017, from the self-insured to the hearing officer the self-insured noted it had attached the self-insured's "First Supplemental CCH exchange regarding [the claimant]." In an email dated June 27, 2017, from the hearing officer to the self-insured and the claimant's attorney the hearing officer stated, in part, the following:

> I have figured out what happened with the report that [the self-insured] sent me on June 9 [2017] that was referred to in the decision and order as not having been received by the Division.
>
> It was sent by [the self-insured] marked as a supplemental CCH exchange. I did not open the document since it was entitled as an exchange. Believing it to be an exchange, I did not open and review the documents.

The self-insured in this case timely submitted the additional documentary evidence in the manner required by the hearing officer to consider the evidence and prior to the closing of the record on June 13, 2017. Accordingly, we reverse the hearing officer's determinations and remand the issues to the hearing officer for further consideration of all the evidence and for further proceedings consistent with this decision.

SUMMARY

We reverse the hearing officer's determination that the compensable injury of (date of injury), extends to a right knee ACL sprain and remand this issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that the claimant has not reached MMI and we remand this issue to the hearing officer for further action consistent with this decision.

We reverse the hearing officer's determination that because the claimant has not reached MMI an IR cannot be determined at this time and we remand this issue to the hearing officer for further action consistent with this decision.

REMAND INSTRUCTIONS

On remand the hearing officer is to consider Dr. H's report, and allow the parties an opportunity to respond. The hearing officer is also to correct the stipulation contained in Finding of Fact No. 1.A. The hearing officer is then to make a determination of whether the (date of injury), compensable injury extends to a right knee ACL sprain, whether the claimant has reached MMI and if so on what date, and if the claimant has reached MMI the claimant's IR.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **CITY OF HOUSTON (a self-insured governmental entity)** and the name and address of its registered agent for service of process is

ANNA RUSSELL – CITY SECRETARY
900 BAGBY
HOUSTON, TEXAS 77002.

Carisa Space-Beam
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Margaret L. Turner
Appeals Judge